

amendment of a regulation establishing a definition and standard of identity for a food under section 401 of the act, which proposes the inclusion of a color additive in the standardized food, the provisions of the regulations in part 71 of this chapter shall apply with respect to the information that must be submitted with respect to the safety of the color additive (if such information has not previously been submitted and safety of the color additive for the intended use has not been already established), and the petition must show also that the use of the color additive in the standardized food would be in conformance with section 401 of the act or with the terms of a temporary permit issued under § 130.17 of this chapter.

(2) If a petition for a definition and standard of identity contains a proposal for a color additive regulation, and the petitioner fails to designate it as such, the Commissioner, upon determining that the petition includes a proposal for a color additive regulation, shall so notify the petitioner and shall thereafter proceed in accordance with the regulations in part 71 of this chapter.

(3) A regulation will not be issued allowing the use of a color additive in a food for which a definition and standard of identity is established, unless its issuance is in conformance with section 401 of the act or with the terms of a temporary permit issued under § 130.17 of this chapter. When the contemplated use of such additive complies with the terms of a temporary permit, the color additive regulation will be conditioned on such compliance and will expire with the expiration of the temporary permit.

(b) *New drugs.* (1) Where an application for a new drug is received and this application proposes, for coloring purposes only, the inclusion of a color additive, the provisions of the regulations in part 71 of this chapter shall apply with respect to the information that must be submitted about the safety of the color additive, if such information has not previously been submitted and safety of the color additive for the intended use has not already been established.

(2) If an application for a new drug inferentially contains a proposal for a color additive regulation, and the applicant fails to designate it as such, the Commissioner, upon determining that the application includes a proposal for a color additive regulation, shall so notify the applicant and shall thereafter proceed in accordance with the regulations in part 71 of this chapter.

(3) Where a petition for a color additive must be filed in accordance with paragraph (b)(2) of this section, the date of filing of the color additive petition shall be considered as the date of filing of the new-drug application.

[42 FR 15636, Mar. 22, 1977, as amended at 64 FR 400, Jan. 5, 1999]

#### § 70.11 Related substances.

(a) Different color additives may cause similar or related pharmacological or biological effects, and, in the absence of evidence to the contrary, those that do so will be considered to have additive toxic effects.

(b) Food additives may also cause pharmacological or biological effects similar or related to such effects caused by color additives, and, in the absence of evidence to the contrary, those that do so will be considered as having additive toxic effects.

(c) Pesticide chemicals may also cause pharmacological or biological effects similar or related to such effects caused by color additives, and, in the absence of evidence to the contrary, those that do so will be considered to have additive toxic effects.

(d) In establishing tolerances for color additives, the Commissioner will take into consideration, among other things, the amount of any common component permitted in other color additives, in food additives, and in pesticide chemical residues as well as the similar biological activity (such as cholinesterase inhibition) produced by such substance.

#### § 70.19 Fees for listing.

(a) Each petition for the listing of a color additive shall be accompanied by a deposit of \$3,000.00 if the proposal is for listing the color additive for use generally in or on foods, in or on drugs, and in or on cosmetics.

## § 70.19

## 21 CFR Ch. I (4-1-06 Edition)

(b) If the petition for the listing is for use in or on foods only, the deposit shall be \$3,000.00.

(c) If the petition for the listing is for use in or on drugs and/or cosmetics only, the deposit shall be \$2,600.00.

(d) The provisions of paragraphs (a), (b), and (c) of this section shall be applicable, whether or not the proposal contemplates any tolerances, limitations, or other restrictions placed upon the use of the color additive.

(e) If a petition proposing the issuance of a regulation is withdrawn before it is finally accepted for filing, the deposit, less a \$600.00 fee for clerical handling and administrative and technical review, shall be returned to the petitioner.

(f) If a petition proposing the issuance of a regulation is withdrawn within 30 days after filing, the deposit, less \$1,800.00 if the petition is covered by paragraph (a) or (b) of this section, and less \$1,600.00, if the petition is covered by paragraph (c) of this section, shall be returned to the petitioner.

(g) When a petition is withdrawn after filing and resubmitted within 6 months, it shall be accompanied by a deposit of \$1,800.00 for a petition filed under paragraph (a) or (b) of this section, and \$1,600.00 for a petition filed under paragraph (c) of this section. If a petition is resubmitted after 6 months, it shall be accompanied by the deposit that would be required if it were being submitted for the first time.

(h) When the resubmission pertains to a petition that had been withdrawn before acceptance for filing, a new advance deposit shall be made in full as prescribed in paragraph (a), (b), or (c) of this section.

(i) After a color additive has been listed, any request for an amendment or additional tolerance shall be accompanied by a deposit of \$1,800.00 for use in the items specified in paragraphs (a) and (b) of this section, or \$1,600.00 for use in items specified in paragraph (c) of this section.

(j) The fee for services in listing a diluent under § 80.35 for use in color additive mixtures shall be \$250.00.

(k) Objections and request for public hearing under section 721(d) of the act or section 203(d)(2)(C) of Pub. L. 86-618 (74 Stat. 404; 21 U.S.C. 379e, note) shall

be accompanied by a filing fee of \$250.00.

(l) In the event of a referral of a petition under this section to an advisory committee, all costs related thereto (including personal compensation of committee members, travel materials, and other costs) shall be borne by the person or organization requesting the referral, such costs to be assessed on the basis of actual cost to the Government: *Provided*, That the compensation of such costs shall include personal compensation of advisory committee members at a rate not to exceed \$75.00 per member per day.

(m) In the case of requests of referrals to advisory committees, a special advance deposit shall be made in the amount of \$2,500.00. Where required, further advance in increments of \$2,500.00 each shall be made upon request of the Commissioner of Food and Drugs. All deposits for referrals to advisory committees in excess of actual expenses shall be refunded to the depositor.

(n) All requests for pharmacological or other scientific studies shall be accompanied by an advance deposit of \$5,000.00. Further advance deposits shall be made upon request of the Commissioner of Food and Drugs when necessary to prevent arrears in such cost. Any deposits in excess of actual expenses will be refunded to the depositor. If a request is denied the advance deposit will be refunded less such costs as are incurred for review of the request.

(o) The person who files a petition for judicial review of an order under section 721(d) of the act shall pay the costs of preparing a transcript of the record on which the order is based.

(p) All deposits and fees required by the regulations in this section shall be paid by money order, bank draft or certified check drawn to the order of the Food and Drug Administration, collectable at par at Washington, DC. All deposits and fees shall be forwarded to the Center for Food Safety and Applied Nutrition (HFS-200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, whereupon after making appropriate record thereof they will be transmitted to the

Treasurer of the United States for deposit in the special account “Salaries and Expenses, Certification, Inspection, and Other Services, Food and Drug Administration.”

(q) The Commissioner of Food and Drugs may waive or refund such fees in whole or in part when in his judgment such action will promote the public interest.

(r) Any person who believes that payment of these fees will work a hardship on him may petition the Commissioner of Food and Drugs to waive or refund the fees.

[42 FR 15636, Mar. 22, 1977, as amended at 54 FR 24890, June 12, 1989; 61 FR 14478, Apr. 2, 1996; 66 FR 56035, Nov. 6, 2001]

### Subpart B—Packaging and Labeling

#### § 70.20 Packaging requirements for straight colors (other than hair dyes).

Straight colors shall be packaged in containers which prevent changes in composition. Packages shall be sealed so that they cannot be opened without breaking the seal. An unavoidable change in moisture content caused by the ordinary and customary exposure that occurs in good storage, packing, and distribution practice is not considered a change in composition. If the packaging material is a food additive it shall be authorized by an appropriate regulation in parts 170 through 189 of this chapter.

#### § 70.25 Labeling requirements for color additives (other than hair dyes).

(a) *General labeling requirements.* All color additives shall be labeled with sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by this part and parts 71, 73, 74, 80, and 81 of this chapter. In addition to all other information required by the act, labels for color additives, except those in a form suitable for coloring the human body, shall state:

(1) The name of the straight color or the name of each ingredient comprising the color additive, if it is a mixture.

(2) A statement indicating general limitations for the use of the color additive, such as “for food use only”; “for food, drug, and cosmetic use”; “for use in drugs for external application only.”

(3) Where regulations issued impose quantitative limitations for a general or specific use of a straight color, the amount of each such straight color in terms of weight per unit/volume or percent by weight.

(4) An expiration date if stability data require it.

(b) *Special labeling for color additives with tolerances.* Where tolerances are imposed for a general or specific use of a color additive, the label shall in addition provide directions for use of the color additive which if followed will preclude the food, drug, or cosmetic to which it is added from containing an amount of the color additive in excess of the tolerance.

(c) *Special labeling for color additives with other limitations.* If use of the color additive is subject to other limitations prescribed in this part, such limitations shall be stated on the label of the color additive by a plain and conspicuous statement. Examples of such limitation statements are: “Do not use in products used in the area of the eye”; “Do not use for coloring drugs for injection.”

(d) *Special labeling for color additives not exempt from certification.* Color additives not exempt from the certification procedures shall in addition include in the labeling the lot number assigned by the Color Certification Branch, except that in the case of any mixture for household use which contains not more than 15 percent of pure color and which is in packages containing not more than 3 ounces there appears on the label, a code number which the manufacturer has identified with the lot number by giving to the Food and Drug Administration written notice that such code number will be used in lieu of the lot number.

### Subpart C—Safety Evaluation

#### § 70.40 Safety factors to be considered.

In accordance with section 721(b)(5)(A)(iii) of the act, the following safety factor will be applied in determining whether the proposed use of a